U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

March 27, 2006

BY FACSIMILE AND ECF
The Honorable John G. Koeltl
United States District Court
Southern District of New York
500 Pearl Street, Room 1030
New York, NY 10007

Re: United States v. William Garcia,
S1 05 Cr. 372 (JGK)

Dear Judge Koeltl:

The Government respectfully submits this motion in limine in anticipation of an evidentiary issue that may arise at the upcoming trial, scheduled for April 5, 2006, and requests a ruling that the Government can introduce certain evidence, described below, at trial, should the defendant raise any objection.

The defendant, William Garcia, is charged in a three-count superseding indictment (the "Indictment") stemming from his conduct on December 25, 2004. Count One charges Garcia with committing a robbery of a restaurant in the Bronx, New York in violation of Title 18, United States Code, Section 1951. Count Two charges the defendant with using and brandishing a gun in furtherance of the robbery, in violation of Title 18, United States Code, Section 924(c)(1)(A)(ii). Count Three charges Garcia with being a felon in possession of a firearm, in violation of Title 18, United States Code, Section 922(g)(1).

The Government proffers that the evidence at trial will show that, late in the evening of December 25, 2004, Garcia went into a restaurant located at 816 East 149th Street in the Bronx, New York. He pointed a gun at the owner of the restaurant ("Victim 1"), threatened her, and told her to give him all of her money. Victim 1 gave Garcia $15. Garcia again demanded all of her money and threatened to shoot her. Garcia fled the restaurant. Victim 1 later told the police that the man who robbed her was wearing a red Santa hat. Victim 1 positively identified Garcia in a police line-up the following day.

Within a few minutes of the restaurant robbery, Garcia walked into a billiards hall located at 857 East 149th Street in the Bronx, New York. Garcia told the manager of the billiards hall ("Victim 2") that he was a police officer, Garcia displayed a fake police badge, and, when Victim 2 asked to see further identification, Garcia threatened Victim 2, and then left. While he was in the billiards hall, Garcia also used a gun to threaten one of the patrons there ("Victim 3"). Victim 2 saw Garcia walk in the direction of Southern Boulevard after he left the billiards hall. One of the billiards hall witnesses called 9-1-1. At least two witnesses from the billiards hall positively identified Garcia in a show-up identification that night.

Garcia was arrested in the vicinity of 500 Southern Boulevard, less than one block away from the billiards hall, a short time later. When Garcia was arrested, he had a .32 caliber handgun, a black toy cap gun revolver, a silver badge, and $15. In addition, he was wearing a red Santa hat. After his arrest, Garcia said, in sum and substance, that he had a gun that night but that it was not loaded.

The Government intends to introduce all of the above-described evidence at trial, including evidence related to Garcia's conduct in the billiards hall, as evidence relevant to prove the three crimes charged in the Indictment. Although two of the three crimes charged (the robbery and use of the gun in furtherance of the robbery charged in Counts One and Two of the Indictment) did not occur inside the billiards hall, the Government submits that evidence related to the defendant's conduct there should be admitted because it provides important direct and circumstantial evidence of all three crimes charged.

Significantly, the items found on the Garcia's person when he was arrested – including the $15 and the gun – are powerful evidence tending to prove that Garcia committed the restaurant robbery and used a gun in furtherance of that robbery. By providing the jury with evidence related to the defendant's actions during the short period of time between the restaurant robbery and the defendant's arrest, the Government will be able to reconstruct, almost continuously, Garcia's whereabouts between the time that he robbed the restaurant and the time that he was arrested. The billiards hall evidence, which accounts for Garcia's whereabouts and activities after the robbery but before he was arrested, is important to show that Garcia did not somehow acquire the gun after the robbery, but rather that he had it during the robbery. Likewise, the evidence of the billiards hall events goes to show that the money found on Garcia when he was arrested was obtained during the restaurant robbery and not from some other source.

Moreover, evidence related to the entire stream of events, from the restaurant to the billiards hall to Garcia's arrest, is relevant to prove Garcia's identity as the man who committed the restaurant robbery and to explain how Garcia came to be arrested by the police. At least three witnesses – one from the restaurant and two from the billiards hall – identified Garcia. The police were looking for Garcia on that night because of the 9-1-1 call by the billiards hall witness and Garcia was arrested because he was found to be in possession of a firearm. Garcia was later identified in connection with the restaurant robbery. Thus, the billiards hall evidence is necessary to explain the police officers' identification of Garcia and his arrest.

In addition to providing evidence about Garcia's robbery of the restaurant and his use of a gun in furtherance of the robbery, Garcia is charged in Count Three with being a felon in possession of a firearm. That crime extends throughout the entire time period, from the restaurant to the billiards hall to his arrest, on the night of December 25, 2004. Evidence that Garcia put a gun against Victim 3's head inside the billiards hall on that night is direct evidence that he possessed a firearm on that night. While the evidence is ambiguous as to whether Garcia used the real gun or a toy gun (also found on his person during his arrest) inside the billiards hall to threaten Victim 3, evidence that the defendant displayed what appeared to be a gun, and then was arrested a short time later with a gun, is probative to show that the defendant possessed a firearm on that night and is guilty of being a felon in possession of a firearm.

Finally, all of the defendant's conduct occurred within a short period of time in the same location. Garcia was in each of the restaurant and the billiards hall for a few minutes, and he was arrested almost immediately after he left the billiards hall. Each of the three relevant locations (the restaurant, the billiards hall, and the area in which Garcia was arrested) are all within one block of each other. Evidence related to Garcia's conduct in the billiards hall will help to explain the timeline of events to the jury and provide context for the relatively short time between the robbery of the restaurant and the defendant's arrest.

To the extent that the defendant may argue that the billiards hall conduct is somehow prejudicial and inadmissible on that basis, the Government submits that the Court should reject that argument. Garcia's conduct inside the billiards hall, displaying a gun and a fake police shield, is not measurably – or at all – more serious than his conduct inside the restaurant, where he brandished a gun at the owner and threatened to shoot her.[1] Thus, evidence about Garcia's conduct inside the billiards hall should not be excluded on the basis that it is any more sensational or inflammatory than the charged crimes.

Therefore, the Government respectfully requests a ruling from the Court that it may introduce all of the above-described evidence at trial.

Respectfully submitted,

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[1] To the extent that the defendant may argue that the billiards hall conduct is inadmissible as bad character evidence, the Government submits that the billiards hall evidence is admissible on an alternate and independent basis under Federal Rule of Evidence 404(b) to show, among other things, proof of intent, plan, knowledge, identity, and absence of mistake or accident. Thus, this letter provides the defendant with the required notice under that rule, and, should the Court require further briefing on these issues, the Government will provide it.